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109TH CONGRESS
1ST SESSION

# H. R. 3899

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide for the combination of defined benefit plans and deferred compensation arrangements in a single plan, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2005

Mr. ANDREWS (for himself and Mr. NUSSLE) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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# A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide for the combination of defined benefit plans and deferred compensation arrangements in a single plan, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*,

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Small Employer Defined Benefit Expansion Act''.

**SEC. 2. TREATMENT OF ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.**

(a) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Section 210 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

''(e) SPECIAL RULES FOR ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—

''(1) GENERAL RULE.—Except as provided in this subsection, in the case of any defined benefit plan or applicable individual account plan forming a part of an eligible combined plan, the requirements of this Act shall be applied to such defined benefit plan or applicable individual account plan in the same manner as if such plan were not a part of the eligible combined plan.

''(2) ELIGIBLE COMBINED PLAN.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'eligible combined plan' means an arrangement—

''(i) which consists of a defined benefit plan and an applicable individual account plan,

''(ii) the assets of which are held in a single trust forming part of the arrangement and are clearly identified and allocated to the defined benefit plan and the applicable individual account plan to the extent necessary for the separate application of this Act under paragraph (1), and

''(iii) with respect to which the benefit, contribution, vesting, and distribution requirements of subparagraphs (B), (C), (D), and (E) are met.

''(B) BENEFIT REQUIREMENTS.—

''(i) IN GENERAL.—The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during

which the participant had the greatest aggregate compensation from the employer.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the lesser of—

''(I) 1 percent multiplied by the number of years of service with the employer, or

''(II) 20 percent.

''(iii) SPECIAL RULE FOR CASH BALANCE PLANS.—

''(I) IN GENERAL.—If the defined benefit plan under clause (i) is a cash balance plan, the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if the employer contribution to the hypothetical account balance expressed as a percentage of the participant's compensation for the year is equal to the percentage determined in accordance with the following table:

| **''If the participant's age as of the beginning of the year is—** | **The percentage is—** |
|---|---|
| 30 or less | 2 |
| Over 30 but less than 40 | 4 |
| 40 or over but less than 50 | 6 |
| 50 or over | 8. |

"(II) CASH BALANCE PLAN DEFINED.—For purposes of subclause (I), a cash balance plan is a defined benefit plan that defines an employee's benefits by reference to the employee's hypothetical account. Such hypothetical account is determined by reference, first, to hypothetical contribution allocations, and, second, to hypothetical interest credits (on an annual or more frequent basis). The right to future interest credits are determined without regard to future service.

"(III) NO PREDECESSOR DEFINED BENEFIT PLAN.—Notwithstanding subclause (I), the requirements of clause (i) shall not be treated as met if, during the 3-year period immediately preceding the effective date of a cash balance plan meeting the requirements of subclause (I), the employer (or any related employer, within the meaning of subsection (b), (c), (m), or (o) of section 414 of the

Internal Revenue Code of 1986), maintained a defined benefit plan that was not a cash balance plan and which benefited any participant who is a participant in the plan which meets the requirements of subclause (I).

''(iv) YEARS OF SERVICE.—For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (1), (2), and (3) of section 203(b), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

''(C) CONTRIBUTION REQUIREMENTS.—

''(i) IN GENERAL.—The contribution requirements of this subparagraph with respect to any applicable individual account plan forming part of an eligible combined plan are met if—

''(I) the qualified cash or deferred arrangement included in such applicable individual account plan

constitutes an automatic contribution arrangement, and

"(II) the employer makes matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) of the Internal Revenue Code of 1986 shall apply of purposes of this clause.

"(ii) NONELECTIVE CONTRIBUTIONS.—An applicable individual account plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

''(D) VESTING REQUIREMENTS.—The vesting requirements of this subparagraph are met if—

''(i) in the case of a defined benefit plan forming part of an eligible combined plan, an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

''(ii) in the case of an applicable individual account plan forming part of eligible combined plan—

''(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

''(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent

of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 203 shall apply to the extent not inconsistent with this subparagraph.

''(E) SPOUSAL CONSENT FOR DISTRIBUTIONS.—The distribution requirements of this subparagraph are met if, in the case of a married participant, no distribution may be made from the plan without the written consent of the spouse of such participant.

''(3) UNIFORM PROVISION OF BENEFITS.—In the case of a defined benefit plan or applicable individual account plan forming part of an eligible combined plan, all benefits, rights, and features must be provided uniformly to all participants.

''(4) AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection—

''(A) IN GENERAL.—A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

''(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to the specified percentage of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate or amount, and

''(ii) meets the notice requirements under subparagraph (B).

''(B) NOTICE REQUIREMENTS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

''(ii) REASONABLE PERIOD TO MAKE ELECTION.—The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

''(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions

made at a different rate or amount, and

"(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

"(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the automatic contribution arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) of the Internal Revenue Code of 1986 shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

"(C) SPECIFIED PERCENTAGE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'specified percentage' means, with respect to any employee—

''(I) 4 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in subparagraph (A)(i) is made with respect to such employee, and

''(II) in the case of any subsequent plan year, the percentage which applied for the previous plan year increased by one percentage point.

''(ii) MAXIMUM PERCENTAGE.—Notwithstanding clause (i)(II), the specified percentage shall not exceed 10 percent.

''(5) TREATMENT AS SINGLE PLAN FOR REPORTING PURPOSES.—An eligible combined plan shall be treated as a single plan for purposes of section 103(b).

''(6) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'applicable individual account plan' means an individual account plan which includes a qualified cash or deferred arrangement.

"(B) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—The term 'qualified cash or deferred arrangement' has the meaning given such term by section 401(k)(2) of the Internal Revenue Code of 1986.".

(2) PREEMPTION OF STATE LAW.—The amendments made by this subsection supersede any provision of a statute, regulation, or rule of a State or political subdivision of a State that would otherwise require an employer to obtain an employee's consent before making a deduction from the wages of such employee.

(3) GUIDELINES FOR MEETING FIDUCIARY REQUIREMENTS.—Section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)) is amended by adding at the end the following new paragraph:

"(3)(A) The Secretary shall prescribe by regulation guidelines for compliance with the requirements of the diversification requirement of paragraph (1)(C) and the prudence requirement (to the extent that it requires diversification) of paragraph (1)(B) in the case of automatic enrollment plans. Such guidelines shall consist of criteria for meeting a standard of well-balanced and highly diversified investment of plan assets. Compliance with such

guidelines shall be deemed compliance with such requirements.

''(B) The criteria prescribed by the Secretary pursuant to subparagraph (A) shall include at least the following:

''(i) sufficiently limited investment of plan assets in securities issued by any single issuer (other than in obligations issued by, or guaranteed as to both principal and interest by, the Government of the United States);

''(ii) sufficient diversification of investment among and within asset classes, which shall include at least sufficient diversification measured as between stocks and bonds, sufficient diversification measured as among varieties of stock categorized by large capitalization, medium capitalization, and small capitalization, and sufficient diversification measured as between investment funds focused on growth and investment funds focused on income; and

''(iii) adequate prospects for a reasonable rate of return on the investment, together with adequate assurance against loss of principal and minimization of fees and other associated costs chargeable to participants.

''(C) For purposes of this paragraph, the term 'automatic enrollment plan' means any plan which includes an automatic contribution arrangement (within the meaning of section 210(e)(3)).''.

(4) REDUCED PBGC PREMIUMS FOR CERTAIN DEFINED BENEFIT PLANS OFFERED WITH CASH OR DEFERRED ARRANGEMENTS.—

(A) REDUCTION IN BASIC PREMIUM FOR NEW PLANS OF SMALL EMPLOYERS.—Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

(i) in clause (i), by inserting ''(except as provided in clause (iv))'' after ''$19'' ;

(ii) in clause (iii), by striking the period at the end and inserting '', and''; and

(iii) by adding at the end the following new clause:

''(iv) for plan years beginning after December 31, 2005, in the case of a plan which is, for the plan year, a new cash-or-deferred single-employer plan maintained by a small employer, $5 for each individual who is a participant in such plan during the plan year.''.

(B) DEFINITIONS.—Section 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following new subparagraph:

''(G)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new cash-or-deferred single-employer plan for each of its first 5 plan years if—

''(I) during the 36-month period ending on the date of the adoption of such plan, the sponsor or any member of such sponsor's controlled group (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan, and

''(II) throughout the period beginning with the date of the adoption of the plan and ending with the first date of such plan year, the plan has formed a part of an eligible combined plan (as defined in section 210(e)(2)(A)).

''(ii)(I) For purposes of this paragraph, the term 'small employer' for a plan year means an employer which on the first day of the plan year has, in aggregation with

all members of the controlled group of such employer, 500 or fewer employees.

''(II) In the case of a plan maintained by two or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.''.

(b) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Section 414 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(w) SPECIAL RULES FOR ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—

''(1) GENERAL RULE.—Except as provided in this subsection, in the case of any defined benefit plan or applicable defined contribution plan forming a part of an eligible combined plan, the requirements of this title shall be applied to such defined benefit plan or applicable defined contribution plan in the same manner as if such plan were not a part of the eligible combined plan.

''(2) ELIGIBLE COMBINED PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'eligible combined plan' means a plan—

"(i) which consists of a defined benefit plan and an applicable defined contribution plan,

"(ii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable defined contribution plan to the extent necessary for the separate application of this title under paragraph (1), and

"(iii) with respect to which the benefit, contribution, vesting, and distribution requirements of subparagraphs (B), (C), (D), and (E) are met.

"(B) BENEFIT REQUIREMENTS.—

"(i) IN GENERAL.—The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage

of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the lesser of—

''(I) 1 percent multiplied by the number of years of service with the employer, or

''(II) 20 percent.

''(iii) SPECIAL RULE FOR CASH BALANCE PLANS.—

''(I) IN GENERAL.—If the defined benefit plan under clause (i) is a cash balance plan, the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if the employer contribution to the hypothetical account balance expressed as a percentage of the participant's compensation for the year is equal to the percentage of compensa-

tion determined in accordance with the following table:

| "If the participant's age as of the beginning of the year is— | The percentage is— |
|---|---|
| 30 or less | 2 |
| Over 30 but less than 40 | 4 |
| 40 or over but less than 50 | 6 |
| 50 or over | 8. |

"(II) CASH BALANCE PLAN DEFINED.—For purposes of subclause (I), a cash balance plan is a defined benefit plan that defines an employee's benefits by reference to the employee's hypothetical account. Such hypothetical account is determined by reference, first, to hypothetical contribution allocations, and, second, to hypothetical interest credits (on an annual or more frequent basis). The right to future interest credits are determined without regard to future service.

"(III) NO PREDECESSOR DEFINED BENEFIT PLAN.—Notwithstanding subclause (I), the requirements of clause (i) shall not be treated as met if, during the 3-year period immediately preceding the effective

date of a cash balance plan meeting the requirements of subclause (I), the employer (or any related employer, within the meaning of subsection (b), (c), (m), or (o)), maintained a defined benefit plan that was not a cash balance plan and which benefited any participant who is a participant in the plan which meets the requirements of subclause (I).

''(iv) YEARS OF SERVICE.—For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

''(C) CONTRIBUTION REQUIREMENTS.—

''(i) IN GENERAL.—The contribution requirements of this subparagraph with respect to any applicable defined contribu-

tion plan forming part of an eligible combined plan are met if—

"(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

"(II) the employer makes matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) shall apply of purposes of this clause.

"(ii) NONELECTIVE CONTRIBUTIONS.—An applicable defined contribution plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining

whether the requirements of clause (i)(II) are met.

''(iii) OTHER PLANS AND ARRANGEMENTS.—An applicable defined contribution plan may not be combined with any other plan for purposes of determining whether the requirements of section 401(a)(4) or 410(b) are met.

''(D) VESTING REQUIREMENTS.—The vesting requirements of this subparagraph are met if—

''(i) in the case of a defined benefit plan forming part of an eligible combined plan, an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

''(ii) in the case of an applicable defined contribution plan forming part of eligible combined plan—

''(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included

in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

"(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 411 shall apply to the extent not inconsistent with this subparagraph.

"(E) SPOUSAL CONSENT FOR DISTRIBUTIONS.—The distribution requirements of this subparagraph are met if, in the case of a married participant, no distribution may be made from the plan without the written consent of the spouse of such participant.

"(3) APPLICATION OF NONDISCRIMINATION RULES.—

"(A) UNIFORM PROVISION OF BENEFITS.—In the case of a defined benefit plan or applicable defined contribution plan forming part of an eligible combined plan, all benefits, rights, and features must be provided uniformly to all participants.

"(B) NONDISCRIMINATION REQUIREMENTS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

"(i) IN GENERAL.—A qualified cash or deferred arrangement which is included in an applicable defined contribution plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) if the requirements of paragraph (2)(C) are met with respect to such arrangement.

"(ii) MATCHING CONTRIBUTIONS.—In applying section 401(m)(11) to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable

under clauses (i) and (ii) of section 401(m)(11)(A).

''(C) REQUIREMENTS MUST BE MET WITHOUT TAKING INTO ACCOUNT SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS AND BENEFITS.—The requirements of subparagraphs (B) and (C) of paragraph (2) and subparagraph (B) of this paragraph shall not be treated as being met unless such requirements are met without regard to section 401(l), and, for purposes of section 402(l), employer contributions under subparagraphs (B) and (C) of paragraph (2) shall not be taken into account .

''(4) SATISFACTION OF TOP-HEAVY RULES.—A defined benefit plan and applicable defined contribution plan forming part of an eligible combined plan for any plan year shall be treated as meeting the requirements of section 416 for the plan year.

''(5) AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection—

''(A) IN GENERAL.—A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

''(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to the specified percentage of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate or amount, and

''(ii) meets the notice requirements under subparagraph (B).

''(B) NOTICE REQUIREMENTS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

''(ii) REASONABLE PERIOD TO MAKE ELECTION.—The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

''(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions

made at a different rate or amount, and

"(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

"(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the automatic contribution arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

"(C) SPECIFIED PERCENTAGE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'specified percentage' means, with respect to any employee—

"(I) 4 percent during the period ending on the last day of the first

plan year which begins after the date on which the first elective contribution described in subparagraph (A)(i) is made with respect to such employee, and

"(II) in the case of any subsequent plan year, the percentage which applied for the previous plan year increased by one percentage point.

"(ii) MAXIMUM PERCENTAGE.—Notwithstanding clause (i)(II), the specified percentage shall not exceed 10 percent.

"(6) COORDINATION WITH OTHER REQUIREMENTS.—

"(A) TREATMENT OF SEPARATE PLANS.—Section 414(k) shall not apply to an eligible combined plan.

"(B) REPORTING.—An eligible combined plan shall be treated as a single plan for purposes of sections 6058 and 6059.

"(7) APPLICABLE DEFINED CONTRIBUTION PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable defined contribution plan' means a defined con-

tribution plan which includes a qualified cash or deferred arrangement.

''(B) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—The term 'qualified cash or deferred arrangement' has the meaning given such term by section 401(k)(2).''.

(2) ADDITIONAL ACCRUALS UNDER DEFINED BENEFIT PLAN FORMING PART OF ELIGIBLE COMBINED PLAN PROVIDED AS MATCHING CONTRIBUTIONS.—

(A) CERTAIN ARRANGEMENTS UNDER DEFINED BENEFIT PLAN SATISFY DEFINITELY DETERMINABLE BENEFIT REQUIREMENT.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(35) QUALIFIED MATCHING ACCRUAL UNDER ELIGIBLE COMBINED PLAN SATISFIES DEFINITELY DETERMINABLE BENEFIT REQUIREMENT.—A trust forming part of a defined benefit plan which forms part of an eligible combined plan (as defined in section 414(x)) shall not be treated as failing to constitute a qualified trust merely because such plan includes qualified matching accruals (as defined in subsection (m)(12)).''.

(B) MATCHING ACCRUALS.—Subsection (m) of section 401 of such Code is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

''(12) SPECIAL RULES RELATING TO QUALIFIED MATCHING ACCRUALS UNDER A ELIGIBLE COMBINED PLAN.—For purposes of this section—

''(A) QUALIFIED MATCHING ACCRUAL.—The term 'qualified matching accrual' means an amount funded by an employer in the form of a benefit accrual under a defined benefit plan forming part of an eligible combined plan (as defined in section 414(x)) to match elective deferrals under a qualified cash or deferred arrangement which is part of such eligible combined plan (as so defined) and which meets the formula requirements of subparagraph (B). The benefit accrual shall be determined under a nondiscretionary formula set forth in the defined benefit plan. For purposes of determining such benefit accrual, the amount of elective deferrals taken into account under such formula may be limited under the plan.

"(B) FORMULA REQUIREMENTS.—A benefit accrual meets the requirements of this subparagraph if such accrual is a hypothetical contribution that is added to a participant's hypothetical account balance, the amount of which is determined, in accordance with the matching accrual formula set forth in the plan, with reference to the amount of the elective deferrals made by the participant for the plan year to a qualified cash or deferred arrangement which is part of the eligible combined plan (as defined in section 414(x)). Matching accruals under the formula may vary with age or other employment-related factors.

"(C) COORDINATE WITH EMPLOYER CONTRIBUTIONS.—For purposes of paragraph (4), the term 'employer contributions' shall not include any amount contributed by an employer to a defined benefit plan for the purpose of funding any qualified matching accruals.

"(D) SAFE HARBOR FORMULA.—A qualified matching accrual formula shall be deemed to satisfy subsection (a)(4) if it satisfies the requirements of clauses (i) and (ii).

''(i) ELECTIVE DEFERRALS AT OR ABOVE MAXIMUM MATCHABLE RATE.—For an employee who makes elective deferrals at or above the maximum matchable rate, the qualified matching benefit accrual for the plan year is a hypothetical allocation under a cash balance plan that equals a percentage (not greater than 4 percent) of compensation (as defined in section 414(s)).

''(ii) ELECTIVE DEFERRALS BELOW MAXIMUM MATCHABLE RATE.—For employees who make elective deferrals at a rate that is below the maximum matchable rate, the qualified matching benefit accrual for such plan year shall be prorated. The plan may prorate the qualified benefit accrual on the basis of whole percentages, and the plan may require that an employee's elective deferrals be stated as whole percentages.

''(iii) MAXIMUM MATCHABLE RATE.—For purposes of this subparagraph, the maximum matchable rate must be a speci-

fied percentage of compensation which does not exceed 4 percent.

''(iv) CASH BALANCE PLAN DEFINED.—For purposes of clause (i), a cash balance plan is a defined benefit plan that defines an employee's benefits by reference to the employee's hypothetical account. Such hypothetical account is determined by reference, first, to hypothetical contribution allocations, and, second, to hypothetical interest credits (on an annual or more frequent basis). The right to future interest credits are determined without regard to future service.''.

(C) EXCEPTION TO BENEFIT CONTINGENCY RULE.—Subparagraph (A) of section 401(k)(4) of such Code is amended by inserting ''or qualified matching accruals (as defined in subsection (m)(12)'' after ''section 401(m))''.

(D) FORFEITURES BY REASON OF EXCESS DEFERRAL.—Subparagraph (G) of section 411(a)(3) of the Code is amended by adding at the end the following: ''A rule similar to the rule of the preceding sentence shall apply with

respect to qualified matching accruals (as defined in section 401(m)(12)).''

(E) ACCRUED BENEFIT REQUIREMENT WITH RESPECT TO MATCHING ACCRUALS.—Paragraph (1) of section 411(b) of such Code is amended by adding at the end the following new subparagraph:

''(J) In the case of qualified matching accruals (as defined in section 401(m)(12)), the requirements for accrued benefits set forth in subparagraphs (A) through (H) of this subsection shall be applied on the basis of the rate of matching accruals available to participants, without regard to the actual elective deferrals made by participants.''.

(F) PARTICIPATION REQUIREMENTS WITH RESPECT TO QUALIFIED MATCHING ACCRUALS.—Paragraph (26) of section 401(a) of such Code is amended by redesignating subparagraph (I) as subparagraph (J), and by inserting after subparagraph (H) the following new subparagraph:

''(I) SPECIAL TESTING RULES FOR QUALIFIED MATCHING ACCRUALS.—

"(i) If an eligible combined plan (as defined in section 414(x)) includes qualified matching accruals (as defined in section 401(m)(12)), the rules in clauses (ii) and (iii) shall apply.

"(ii) QUALIFIED MATCHING ACCRUALS ONLY BENEFIT FORMULA.—If the only benefit formula in the defined benefit plan forming a part of the eligible combined plan is a qualified matching accrual formula, the requirements of this paragraph shall be applied by treating a participant's annual benefit accrual as the maximum accrual that was available to the participant for the plan year, regardless of whether the maximum matchable elective deferrals were actually made by the participant. If the qualified matching accrual formula applies to elective deferrals in excess of 6 percent of compensation, then the requirements of this paragraph must be applied by taking into account the actual matching accruals earned by participants for the plan year.

"(iii) MULTIPLE FORMULAS.—If the defined benefit plan includes one or more

benefit formulas in addition to a qualified matching accrual formula, the employer may elect to apply clause (ii) to the qualified matching accrual formulas only if the requirements of this paragraph are satisfied separately with respect to the benefit accruals that are determined without regard to the qualified matching accrual formula.''.

(G) REGULATIONS FOR MEETING NONDISCRIMINATION REQUIREMENTS.—

(i) IN GENERAL.—The Secretary of the Treasury shall prescribe regulations on ways in which qualified matching accruals (as defined by section 401(m)(12) of the the Internal Revenue Code of 1986, as added by this section) that do not satisfy the formula requirements of section 401(m)(12)(D) of such Code (as enacted by subsection (b) of this section) can satisfy the nondiscrimination requirements of section 401(a)(4) of such Code. The regulations may prescribe safe harbor formulas in addition to those prescribed by section 401(m)(12)(D).

(ii) TEMPORARY AND FINAL FORM.—The Secretary shall prescribe the regulations required by clause (i) in temporary form not later than 6 months after the effective date of this section and in final form not later than 18 months after the effective date of this section.

(H) PLAN YEARS BEGINNING BEFORE ISSUANCE OF REGULATIONS.—For plan years beginning prior to the date the regulations described in subsection (g) are issued in final form (and after the effective date of this section), a plan's qualified matching accrual formula must satisfy a reasonable, good faith, interpretation of section 401(a)(4) of such Code.

(3) UPDATING DEDUCTION RULES FOR COMBINATION OF PLANS.—

(A) IN GENERAL.—Subparagraph (C) of section 404(a)(7) of such Code (relating to limitation on deductions where combination of defined contribution plan and defined benefit plan) is amended by adding after clause (ii) the following new clause:

''(iii) CERTAIN EXCESS CONTRIBUTIONS.—In the case of employer contribu-

tions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions (other than elective deferrals (as defined in section 402(g)(3)) exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.''.

(B) CONFORMING AMENDMENT.—Subparagraph (A) of section 4972(c)(6) of such Code (relating to nondeductible contributions) is amended to read as follows:

''(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the sum of—

"(i) the amount of contributions described in section 401(m)(4)(A), plus

"(ii) the amount of contributions described in section 402(g)(3)(A), or".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to plan years beginning after December 31, 2006.

(2) PBGC PREMIUMS.—The amendments made by subsection (a)(4) shall apply to plans first effective after December 31, 2005.

(3) DEDUCTION RULES FOR COMBINATION OF PLANS.—The amendments made by subsection (b)(3) shall apply to contributions for taxable years beginning after December 31, 2005.

(4) CASH BALANCE RULES.— Section 210(e)(2)(B)(iii) of the Employee Retirement Income Security Act of 1974 (as added by this section), section 414(w)(2)(B)(iii) of the Internal Revenue Code of 1986 (as so added), and each of the amendments made by subsection (b)(2) shall not apply to plan years beginning before the effective date of an Act which provides for clarification of the application of section 204(b)(1)(H) of such Act, sec-

tion 411(b)(1)(H) of such Code, and section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) to cash balance plans.

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